A **MBF HOLDINGS BHD & ANOR**

v.

DATO' LOY TEIK NGAN & ORS

B HIGH COURT MALAYA, KUALA LUMPUR
HAMID SULTAN ABU BACKER J
[SUIT NO: D-22NCC-2317-2010]
7 JULY 2011

C ***CIVIL PROCEDURE:*** *Striking out - Action - Application to strike out action premised on time bar and wrongful joinder of parties - Whether applicants liable in their personal capacity - Whether other defendants chose not to file an application to strike out plaintiffs' action - Whether other defendants supports striking out application - Whether applicants* D *misconceived - Rules of the High Court 1980, O. 18 r. 19(1)(b), (c) & (d)*

The 8th and 9th defendants ('the applicants') had filed an application to strike out the plaintiffs' action pursuant to O. 18 E r. 19 (1)(b), (c) and (d) of the Rules of the High Court 1980 ('the Rules') premised on time bar and alternatively, their names in the writ and statement of claim to be struck out pursuant to O. 15 r. (6)(2)(a) of the Rules for wrongful joinder of parties. The applicants were directors of Arthur Andersen Corporate Advisory F Sdn. Bhd. ('AA'). The plaintiffs' complaint was that AA did not adequately advice the plaintiffs' former directors in relation to the wrongful disposal of land and shares and had thereby facilitated the disposal of the assets when the plaintiffs were insolvent. The central issue in this case was whether the applicants, who were involved in the restructuring scheme presentation *etc*., could be G made personally liable in negligence. The applicants submitted that (i) they did not owe any duty of care towards the plaintiff in their personal capacity; (ii) they did not act negligently, and (iii) the plaintiffs' claim was time barred.

H **Held (dismissing the application with costs):**

(1) The plaintiffs' action on the face of it may be a subject matter of much technical objections of law relating to time and cause of action. However, the other defendants in this action have I not chosen to file an application to strike out the plaintiffs' action *in limine* and/or filed affidavit in support of the

applicants' application to allow the court to take a holistic approach to the real issues involved and the nexus relating to the applicants. In consequence, it could not at this stage be said that the action against the applicants was misconceived or ought to be struck out. (para 12)

(2) It was also not a fit and proper case to strike out the name of the applicants pursuant to the provision of O. 15 of the Rules relating to joinder as case laws will suggest that if there is a nexus, no injustice will be caused, and if it is just and convenient that a person is joined as defendant, the court will do so. *(First Malaysia Finance Bhd v. Dato Mohd Fathi bin HA; refd)*. (para 15)

Case(s) referred to:

Abdul Manaf Ahmad v. Mohd Kamil Datuk Hj Mohd Kassim [2009] 2 CLJ 121 CA ***(refd)***

Aspatra Sdn Bhd & Ors v. Bank Bumiputra (M) Bhd & Anor [1987] 2 CLJ 377; [1987] CLJ (Rep) 50 SC ***(refd)***

Bank Bumiputra (M) Bhd v. Tetuan Wan Marican Hamzah & Shaik & 2 Lagi [1994] 2 CLJ 365 HC ***(refd)***

British Steel Corporation v. Granada Television Limited [1980] 3 WLR 774

C Evans & Sons Ltd v. Spritebrand Ltd [1985] 2 All ER 415 ***(refd)***

Caparo Industries Plc v. Dickman [1990] 2 AC 605 ***(refd)***

Credit Lyonnais Bank Nederland NV v. Export Credits Guarantee Department [2000] 1 AC 486 ***(refd)***

Ernst & Young v. Maxbiz Corporation Berhad [2008] 6 CLJ 136 CA ***(refd)***

First Malaysia Finance Berhad v. Dato' Mohd Fathi Haji Ahmad [1993] 3 CLJ 329 SC ***(refd)***

Kuala Lumpur Finance Berhad v. KGV & Associates Sdn Bhd [1995] 1 CLJ 519 HC ***(refd)***

Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor [1997] 3 CLJ 305 FC ***(refd)***

Lim Soh Wah & Anor v. Wong Sin Chong & Anor & Another Appeal [2001] 2 CLJ 344 CA ***(refd)***

Loose v. Williamson [1978] WLR 639 ***(refd)***

Merrett v. Babb [2001] QB 1174 ***(refd)***

Norwich Pharmacal Company v. Customs and Excise Commissioners [1973] 3 WLR 164 ***(refd)***

Sunrise Sdn Bhd v. First Profile (M) Sdn Bhd & Anor [1997] 1 CLJ 529 FC ***(refd)***

Trevor Ivory Ltd v. Anderson [1992] 2 NZLR 517 ***(refd)***

Q2 Engineering Sdn Bhd v. PJI-LFGC (Vietnam) Ltd & Ors [2011] 1 LNS 506 ***(refd)***

Williams v. Natural Life Foods [1998] 1 WLR 830 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 15 r. 6(2)(a), O. 18 r. 19(1)(b), (c), (d), O. 34

For the plaintiff - Dato' C Sri Kumar (Andy Tan with him); M/s Kumar Partnership
For 8th & 9th defendants - S Suhendran (SY Soh with him); M/s Kadir, Andri & Partners

Reported by Melanie Murthy

JUDGMENT

Hamid Sultan Abu Backer J:

[1] This is my judgment in respect of the 8th and 9th defendants' application (encl. 16) to strike out the plaintiffs' action pursuant to O. 18 r. 19(1)(b), (c), (d) and alternatively the name of the 8th and 9th defendants in the writ and statement of claim be struck out pursuant to O. 15 r. 6(2)(a) of the Rules of the High Court 1980.

[2] The central issue in this case is whether the 8th and 9th defendants who were directors of Arthur Andersen Corporate Advisory Sdn. Bhd. ("AA") and who were involved in the restructuring scheme presentation etc, could be made personally liable in negligence etc.

[3] The parties have relied on the following cases: *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* [1997] 3 CLJ 305; *Merrett v. Babb* [2001] QB 1174; *Williams v. Natural Life Foods* [1998] 2 All ER 577; *Lim Soh Wah & Anor v. Wong Sin Chong & Anor & Another Appeal* [2001] 2 CLJ 344; *Aspatra Sdn. Bhd. & Ors v. Bank Bumiputra (M) Bhd & Anor* [1987] 2 CLJ 377; [1987] CLJ (Rep) 50; *Sunrise Sdn. Bhd. v. First Profile (M) Sdn. Bhd. & Anor* [1997] 1 CLJ 529; *Caparo Industries Plc v. Dickman* [1990] 2 AC 605; *Ernst & Young v. Maxbiz Corporation Berhad* [2008] 6 CLJ 136; *Kuala Lumpur Finance Berhad v. KGV & Associates Sdn. Bhd.* [1995] 1 CLJ 519; *Bank Bumiputra (M) Bhd v. Tetuan Wan Marican Hamzah & Shaik & 2 Lagi* [1994] 2 CLJ 365; *Trevor Ivory Ltd v. Anderson* [1992] 2 NZLR 517; *C Evans & Sons Ltd v. Spritebrand Ltd* [1985] 2 All ER 415; *Credit Lyonnais Bank Nederland NV v. Export Credits Guarantee Department* [2000] 1 AC 486; *Abdul Manaf Ahmad v. Mohd Kamil Datuk Hj Mohd Kassim* [2009] 2 CLJ 121.

Brief Facts

[4] The plaintiffs' complaint in essence is in respect of the former directors of the plaintiffs for wrongful disposal of land and shares. And assert that AA did not adequately advise against the disposal and thereby facilitated the disposal of the assets when the plaintiffs were insolvent.

[5] The striking out application is premised on time bar under the Limitation Act 1953 (Revised 1981) and wrongful joinder of parties. And the applicants assert that it was AA who was appointed and they were not appointed personally. The learned counsel for the applicants submits as follows:

(i) They do not owe any duty of the case towards the plaintiffs in their personal capacity;

(ii) Alternatively, even if such duty was owed, which is denied, they did not act negligently;

(iii) Even if there was a duty owed and the 8th and 9th defendants have acted negligently, which is denied, the plaintiffs' claim is time barred.

[6] The applicants also say that the plaintiffs' allegation that the 8th and 9th defendants aided and abetted in the conspiracy carried out by the other defendants cannot be sustained as aiding and abetting are concept in criminal law and has no application in respect of civil claim for conspiracy. In addition the applicants say that the action is time barred as the engagement, transaction and the scheme took place more than 12 years ago. And assert that in the instant case the pleadings do not disclose a cause of action for conceded fraud and what is alleged is inaction on the part of the 8th and 9th defendants and not positive fraudulent conduct. And rely on the case of *Abdul Manaf Ahmad (supra)* where Gopal Sri Ram JCA had referred to *Rustomji on the Law of Limitation and Adverse Possession*, 7th edn in which it was stated:

> There must be some affirmative act designed to prevent, and which does prevent, the discovery of the cause of action. Mere silence or passiveness (there being no fiduciary relation or act of the party calculated to deceive or lull inquiries) is not fraudulent concealment.

[7] It must be noted that by taking into consideration the alternative submission of the learned counsel for the applicants in para. (5) above the issue cannot be summarily determined. In addition the main action is not against the 8th and 9th defendants, and other defendants have filed defence and till date have not filed any application to strike out the matter or any affidavit in support of the applicants.

[8] The submission of the learned counsel for the applicants *inter alia* can be summarised as follows:

(i) A duty cannot be imputed on the 8th and 9th defendants personally simply because they had once been directors of AA. Similarly, a duty does not arise simply because the plaintiffs have alleged that the 8th and 9th defendants are 'professionals'. There is no established category of duty in respect of restructuring consultant and the client company.

(ii) The modern test for whether one person could owe a duty to another to take care is to determine whether a relationship of proximity exists. This is the modern term for the 'neighbour' principle established in *Donoghue v. Stevenson*. The following matters make it clear why a relationship of proximity does not exist:

(a) The 1st plaintiff engaged and appointed AA to advise on a restructuring exercise proposed to be undertaken by a group of companies identified as Category B and Category C companies for the purposes of regularising their financial position. The plaintiffs did not deny that the engagement was between the 1st plaintiff and AA.

(b) The 8th and 9th defendants were never personally engaged by the plaintiffs to advise on the restructuring plan or otherwise. This is clear from the plaintiffs' statement of claim.

(c) It is accepted that the financial advisers are allowed to provide their services by way of limited liability companies: see *Jackson & Powell on Professional Liability* at p. 57.

(iii) In the present case, the services were provided by AA, and there was no contract between the employees of AA (including the 8th and 9th defendants) and the plaintiffs. Any claim on breach of duties or negligence (which is denied) should be directed against AA and not its employees.

And relies on the case of *Williams v. Natural Life Foods (supra)*, where the plaintiff entered into a contract with a company which held itself out as an expert in providing advice to franchisees. The plaintiffs brought an action against the company claiming damages in respect of the financial loss which they suffered as a result of the company's negligent advice and, following the winding up of the company, joined the director of the company as a defendant. The House of Lords held that the director was not personally liable to the plaintiff for there is no assumption of personal liability on the part of the director. The fact that the company acting principally by the director and who played a prominent part in producing detailed financial projections provided to the plaintiff were held as insufficient to affix liability on the part of the director. The House of Lords said this at pp. 582-583:

> The touchstone of liability is not the state of mind of the defendant. An objective test means that the primary focus must be on things said or done by the defendant or on his behalf in dealings with the plaintiff. Obviously, the impact of what a defendant says or does must be judged in the light of the relevant contextual scene. Subject to this qualification, the primary focus must be on exchanges (in which term I include statements and conduct) which cross the line between the defendant and the plaintiff. Sometimes such an issue arises in a simple bilateral relationship. In the present case a triangular position is under consideration: the prospective franchisees, the franchisor company, and the director. In such a case where the personal liability of the director is in question, the internal arrangements between a director and his company cannot be the foundation of a director's personal liability in tort. The inquiry must be whether the director, or anybody on his behalf, conveyed directly or indirectly to the prospective franchisees that the director assumed personal responsibility towards the prospective franchisees. An example of such a case being established is *Fairline Shipping Corp v. Adamson* [1974] 2 All ER 967, [1975] QB 180. The plaintiffs sued the defendant, a director of a warehousing company, for the negligent storage of perishable goods. The contract was between the plaintiff and the company. But Kerr J (later Kerr LJ) held that the director was personally liable. That conclusion was possible because the director wrote to the customer, and rendered an invoice, creating the clear impression that he was personally answerable for the services. If he had chosen to write on company notepaper, and rendered an invoice on behalf of the company, the necessary factual foundation for finding an assumption of risk would have been absent.

A And also relies on the case of *Trevor Ivory Ltd (supra)* whereby the plaintiff contracted a company as consultant in advising the plaintiff on the usage of certain herbicide in their orchard. The plaintiff's plant was damaged by the herbicide. The plaintiff sued the company and its director for breach of duty as an advisory. B The New Zealand Court of Appeal was asked to consider whether the director owed a duty of care to the plaintiff, and the court of appeal said this at pp. 8 and 9 of Lexis Report:

> First, Gault J spoke of Mr Rutherfurd as being engaged personally to provide a service through the vehicle of his C company: a way of putting it suggestive of a contract between Mr Rutherfurd and the plaintiffs. Almost certainly the Judge did not intend to find such a contract, but the concept of personal engagement is not explored. Whatever may have been the position in Centrepac, it is no longer suggested in the present case that D there was any contract between the respondents and Mr Ivory. Secondly, in imposing a duty of care on Mr Rutherfurd, the Judge appears to have considered solely the obviously high decree of foreseeability and, in that sense, proximity. As stated in *South Pacific Manufacturing Co Ltd v. New Zealand Security Consultants & E Investigations Ltd* [1992] 2 NZLR 282 in which judgments have recently been delivered, I remain of the view which I have expressed in a number of cases over the years that the inquiry in a duty of care issue is wider than that. Although more distant from the present case on the facts, *Morton v. Douglas Homes Ltd* [1984] 2 NZLR 548, 593-600, a decision of Hardie Boys J in a F building subsidence case, is also at first sight helpful to the respondents. But that case is distinguished in the judgment which my brother is delivering in the present case. So far as there were findings in that case of personal liability on the part of directors, I am content to accept that on the particular facts there was an G assumption of responsibility. Clearly the judgment was not intended to lay down a general rule in building negligence cases; and it would be unsafe to try to argue from one particular set of facts to another. In this field I agree with Nourse J (as he then was) in the White Horse case that it behoves the Courts to avoid imposing on the owner of a one-man company a personal duty H of care which would erode the limited liability and separate identity principles associated with the names of Salomon and Lee. Viewing the issue as one of the assumption of a duty of care, which is the way in which Mr Fogarty for the respondents rightly asked us to view it, I cannot think it reasonable to say that Mr Ivory assumed a duty of care to the plaintiffs as if he were carrying on I business on his own account and not through a company.

> Certainly it was important to the plaintiffs to have Mr Ivory's personal advice, and it was represented that they were receiving it thus the company's invoices for the annual fees referred to consultancy fees "for" or "by" TA Ivory. They were company invoices nonetheless. In my view the realistic interpretation is simply that Mr Ivory was identifying himself with his company, as if he had read the Tesco case.

[9] The learned counsel for the plaintiffs says that the 8th and 9th defendants can be made liable in their personal capacity if the plaintiffs have been wronged. Support for the proposition can be gleaned from a number of cases:

(i) In the English case of *Merrett v. Babb (supra)*, the plaintiff brought an action against the defendant, who was a salaried employee of a company, personally seeking damages for negligent valuation. The Court of Appeal affirmed the decision of the High Court that the defendant, a professionally qualified surveyor and valuer, although was a salaried employee, was negligent in preparing the mortgage valuation report. The Court of Appeal held as follows:

> to determine whether a defendant owed a duty of care to a claimant it was helpful to ask whether the defendant was to be taken to have assumed responsibility to the claimant to guard against the loss for which damages were claimed; that the professional person who carried out an inspection of a property for a mortgage lender and made the valuation of it was the person on whom the purchaser relied to exercise proper skill and judgment; that, since the defendant as a professional surveyor knew that the claimant and her mother would rely on his skill and since it was fair and reasonable in relation to a modest property that they should do so, the defendant owed them a duty of care; that the material relationship was between the purchaser and the employed professional valuer and the nature of the valuer's employment was not relevant to their relationship; and that, accordingly, since the defendant signed the mortgage valuation report in his personal capacity … he assumed personal responsibility for it in the knowledge that his report would be relied on by the claimant and her mother, and the responsibility which he assumed included a responsibility to them.

(ii) Similarly, in another English case of *Williams v. Natural Life Foods (supra)*, the House of Lord held in the following manner:

> ... to establish the personal liability of a director or employee there had to have been such an assumption of personal responsibility by him as to create a special relation between him and the plaintiff; that is determining whether there had in law been such an assumption an objective test was to be applied, the primary focus being on things done or said by the defendant or on his behalf and the question being whether the plaintiff could reasonably have relied and had relied on an assumption of personal responsibility by him.

(iii) In *Lim Soh Wah (supra)* the Court of Appeal held an advocate (not the firm) to be negligent when he failed to inform the plaintiffs of the trial date which resulted in judgment being entered against the plaintiffs. The court stated as follows:

> Advocates and solicitors undertake an onerous task when they agree to act for a client. There is an assumption of responsibility by the advocate and solicitor coupled with reliance by the client on the skill of the advocate and solicitor. The advocate and solicitor's duty to exercise reasonable care and skill is imposed both by contract and by the law of tort.

[10] The learned counsel for the plaintiffs vehemently asserts that the applicants cannot hide behind the 'veil of incorporation' to evade liability. And says:

(i) *Aspatra Sdn. Bhd. (supra)*, the plaintiff commenced an action against the director of a bank for the return of secret profits and, consequently, the corporate veil was lifted. In doing so, the court held as follows:

> ...; the court could generally lift the corporate veil in order to do justice particularly where an element of fraud is involved. There was admittedly an element of fraud in the receipt of the secret profits alleged in this case and this was sufficient for the court to lift the corporate veil for the purpose of determining whether the assets of the company were really owned by them.

(ii) In *Sunrise Sdn. Bhd. (supra)*, the Federal Court held that in cases where the doctrine of separate entities is being used to enable persons to evade their contractual obligations or duties, the court would disregard the doctrine of separate entities. In that case, the court was satisfied from the evidence that an injunction should be granted to restrain the person in actual control and management of the company (as opposed to the company itself) from evading the contractual obligations or duties undertaken by the company. It is however necessary for the court to examine all the evidence and the circumstances to decide whether it is appropriate to disregard the doctrine of separate entities.

(iii) In the English case of *Caparo Industries Plc (supra)*, the House of Lords held that the following elements are essential for a duty of care to exist:

(a) There must be reasonable foreseeability;

(b) There must be a close and direct relationship of 'proximity' between the parties; and

(c) It must be fair, just and reasonable to impose liability.

(iv) This aspect of the principle was affirmed in the relatively recent Federal Court case of *Ernst & Young v. Maxbiz Corporation Berhad (supra)* where the court held that whether there exists a duty of care in given circumstances is a mixed question of law and facts. The three-fold test calls for a meticulous examination of the facts and circumstances. As such, the Federal Court dismissed the defendant's (a firm of auditors) appeal to strike out the action.

[11] In respect of the issue relating to limitation the learned counsel for the plaintiffs says that:

(i) The plaintiffs' cause(s) of action against the 8th and 9th defendants is based on conspiracy to defraud and professional negligence; as regards the other defendants the cause(s) action are amongst others, conspiracy to defraud and fraudulent misrepresentation. The plaintiffs only discovered the conspiracy to defraud in 2006 when the new management of the 1st plaintiff conducted a review of record of the MBf Holdings

A Group. Even so, it was only over 2008 and 2009 that further files and documents were recovered from the plaintiffs' archives and a composite picture of the concealed conspiracy to defraud perpetrated on the plaintiffs emerged.

B (ii) In the circumstances time only starts to run in 2006. The present action was filed in December 2010 and it is certainly filed within time and not barred by limitation.

(iii) In *Kuala Lumpur Finance Bhd (supra)*, it was held that the C cause of action arose when the plaintiff discovered the defendant's negligence and/or fraud. In that case, time only started to run after the plaintiff had received another valuation report from another firm of valuers which showed that the defendant's report was totally false.

D **[12]** I have read the application, affidavits and submissions of the parties in detail. After having given much consideration to the submission of the learned counsel for the applicants I take the view that the application must be dismissed. My reasons *inter alia* are as follows:

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(i) The trial for this action has been fixed on 22 to 25 August 2011. It is quite apparent that the plaintiffs' action on the face of it may be a subject matter of much technical objections of law relating to time and cause of action. However the F other defendants in this action have not chosen to file an application to strike out the plaintiffs' action *in limine* and/or filed affidavit in support of the 8th and 9th defendants' application to allow the court to take a holistic approach to the real issues involved and the *nexus* relating to the G applicants. In consequence it cannot at this stage be said that the action against the applicants is misconceived or ought to be struck out.

(ii) There is much literature and repeated lectures in judgments H relating to the jurisprudence relating to striking out, to show how simple the concept is but in practice at times one will find it is unsettled and depends on the facts of the case and ultimately the discretion of the trial judge who may have exercised his discretion to hear the case. In *Q2 Engineering Sdn. Bhd. v. PJI-LFGC (Vietnam) Ltd & Ors* [2011] 1 LNS I 506, I have made the following observation:

A good read in respect of the law of striking out is found in the case of Court of Appeal of *Tenaga Nasional Bhd v. Irham Niaga Sdn. Bhd. & Anor* [2011] 1 CLJ 491 which has now been overruled by the Federal Court on some other grounds. It is well settled that the power to strike out summarily will only be exercised in plain and obvious cases (see *Bandar Builder Sdn. Bhd. & Ors (supra)*) or where the action cannot be maintained in law (see *Raja Zainal Abidin bin Raja Haji Tachik & Ors (supra)*) or where the suit is an abuse of process (see *Boo Are Ngor (supra)*) and as early as 1877 it is well settled that the appellate court will not readily interfere with the discretion of the court (see *Dary v. Garrett* [1877] Ch. D. 473; *Evans v. Bartlam (supra)*). I have dealt with this area of jurisprudence in a number of cases to name a few are as follows: *Irham Niaga Sdn. Bhd. & Anor v. Tenaga Nasional Bhd* [2010] 10 CLJ 178; *Duta Arif Sdn. Bhd. & 2 Ors v. Chartered Development Corporation Sdn. Bhd. & 3 Ors* [2007] 1 LNS 415; [2008] 6 MLJ 139.

[13] In some jurisdiction the right of appeal on refusal to strike out the action is barred by rules of court. That is to say interlocutory matters which do not finally determine the subject matter of the action is prohibited from appellate scrutiny. In our jurisdiction there are cases where the trial judge had refused to strike out the action, but the Court of Appeal had allowed the appeal and the Federal Court had set aside the decision of the Court of Appeal. Thus, such cases create much confusion, waste of judicial time and delay in litigation process and have created unnecessary backlog and also, does not promote the 'mantra' for speedy disposal as advocated in O. 34 of the Rules of the High Court 1980 in particular the provision relating to 'just, expeditious and economical disposal'.

[14] Taking into consideration the other defendants had not filed an application to strike out and the case laws suggest that the applicants can be liable if the plaintiffs had been wronged. I cannot for sure say that it is a fit and proper case to be struck out, under O. 18 r. 19 provision, at this stage unless the other defendants file an application to strike out and is allowed by the court. It must also be noted that the cases which the applicant had relied on, was not related to striking out application.

[15] In addition I must say that it is also not a fit and proper case to strike out the name of the applicants pursuant to the provision of O. 15 relating to joinder, as case laws will suggest

A that if there is a nexus, no injustice will be caused – and if it is just and convenient that a person is joined as defendant the court will do so. Further I must say that there are many inroads developed in recent years which may relate to joinder and striking out. The House of Lords decision in *Norwich Pharmacal Company*
B *v. Customs and Excise Commissioners* [1973] 3 WLR 164 at 168 relating to discovery against a person who is not a party to the action extends the scope of personal liability directly and/or indirectly. In the *Norwich* case, the House of Lords stated that where a person, *albeit* innocently and without incurring any
C personal liability, became involved in the tortious acts of others he came under a duty to assist one injured by those acts by giving him full information by way of discovery and disclosing the identity of the wrong doers, and for that purpose it mattered not that such involvement was the result of voluntary action or the
D consequence of the performance of a statutory duty or otherwise; and that, accordingly, *prima facie* the respondents were under a duty to disclose the information sought. In this case the court held that a party could bring a specific action by writ against a person for discovery of the name of a potential defendant if that person
E has facilitated the wrongdoing of the potential defendant and has the necessary information. The *Norwich* rule was applied in *Loose v. Williamson* [1978] WLR 639 and *British Steel Corporation v. Granada Television Ltd* [1980] 3 WLR 774. The principles enunciated in *Norwich* case was adopted and approved in *First*
F *Malaysia Finance Berhad v. Dato' Mohd Fathi Haji Ahmad* [1993] 3 CLJ 329. In this case it was held that the general rule as laid down in *Norwich*'s case is that discovery to find the identity of the wrongdoer is available against anyone against whom the plaintiff has a cause of action in relation to the same wrong. To this
G general rule, there is an exception that if, through no fault of his own, a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing, whilst he may incur no personal liability, he is under a legal duty to assist the person who had been wronged by giving him full information and in making
H disclosure of the identity of the wrongdoers. Further the court stated that a Norwich Pharmacal order being an equitable remedy will not be granted as of right even when the requirements for it were satisfied and the court has a discretion as to whether to grant or refuse it.

I

[16] For reasons stated above I dismiss the applicants' application in encl. 16 with costs. The applicants to pay costs in the sum of RM5,000 to the plaintiffs. The order for costs may be extracted upon the payment of allocatur fees. The plaintiffs to pay the allocatur fees. The deputy registrar to issue the certificate for the allocatur.

I hereby order so.